

Ryan Lee (SBN: 235879)  
Krohn & Moss, Ltd.  
10474 Santa Monica Blvd., Suite 401  
Los Angeles, CA 90025  
T: (323) 988-2400 x 241  
F: (866) 799-3206  
rlee@consumerlawcenter.com  
Attorney for Plaintiff,  
DANA PASQUALE

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

DANA PASQUALE,	)	<b>Case No.: 4:11-cv-5265-YGR</b>
	)	
Plaintiff,	)	<b>NOTICE OF MOTION FOR LEAVE TO</b>
	)	<b>FILE AMENDED COMPLAINT</b>
v.	)	
	)	<b>Hon. Yvonne Gonzalez Rogers</b>
LAW OFFICES OF NELSON &	)	
KENNARD,	)	<b>Date: June 26, 2012 at 2:00 P.M.</b>
	)	<b>Time: 2:00 P.M.</b>
Defendant.	)	<b>Location: United States Courthouse,</b>
		<b>Ronald V. Dellums Federal Building, 1301</b>
		<b>Clay Street, Oakland, California.</b>

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**TO ALL PARTIES AND ATTORNEYS OF RECORD:**

NOTICE IS HEREBY GIVEN that on Tuesday, June 26, 2012 at 2:00 P.M. before the Honorable Yvonne Gonzalez Rogers, at the United States Courthouse, Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, California, Plaintiff will present her Motion for Leave to File Amended Complaint. The Motion will be based on the following memorandum and accompanying exhibits, and all other files, pleadings, and records in this action.

Dated: May 31, 2012

RESPECTFULLY SUBMITTED,

By: Ryan S. Lee  
Ryan S. Lee  
Attorney for Plaintiff.

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DANA PASQUALE,	)	<b>Case No.: 4:11-cv-5265-YGR</b>
	)	
Plaintiff,	)	<b>MOTION FOR LEAVE TO FILE</b>
	)	<b>AMENDED COMPLAINT</b>
v.	)	
	)	<b>Hon. Yvonne Gonzalez Rogers</b>
LAW OFFICES OF NELSON &	)	
KENNARD,	)	<b>Date:</b>
	)	<b>Time: 2:00 P.M.</b>
Defendant.	)	<b>Location: United States Courthouse,</b>
		<b>Ronald V. Dellums Federal Building, 1301</b>
		<b>Clay Street, Oakland, California.</b>

**TO ALL PARTIES AND ATTORNEYS OF RECORD:**

**PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

NOW COMES Plaintiff, DANA PASQUALE, ("Plaintiff") by and through her attorneys, KROHN & MOSS, LTD., and for her Motion for Leave to File Amended Complaint against Defendant LAW OFFICES OF NELSON & KENNARD ("Defendant"), states:

1. On October 28, 2011, Plaintiff filed her Verified Complaint against Defendant pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* ("FDCPA") and Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.* ("RFDCPA"). [DE 1].

2. Since the filing of Plaintiff's Complaint, new information of Defendant's recent conduct has come to light supporting additional counts being added to Plaintiff's claim.

1           3.       Pursuant to this Court's Case Management and Pretrial Order of May 18, 2012  
2 [DE 19], the deadline to amend pleadings in this matter is May 31, 2012.

3           4.       It is well-settled that leave to amend a complaint should be freely given "[i]n  
4 absence of any apparent or declared reasons such as undue delay, bad faith or dilatory motive on  
5 part of movant, repeated failure to cure deficiencies by amendments previously allowed, undue  
6 prejudice to opposing party by virtue of allowance of amendment, and futility of amendment."  
7 *Foman v. Davis*, 371 U.S. 178, 182 (1962).

8           5.       There is no undue prejudice to Defendant in allowing the filing of Plaintiff's  
9 Amended Complaint. Pursuant to the federal notice pleading standard, the underlying  
10 requirement for a complaint is that it gives fair notice of the claim being asserted and the grounds  
11 upon which it rests. *See* Fed. R. Civ. P. 8(a)(2); *see also Bell Atlantic Corp. v. Twombly*, 550  
12 U.S. 554, 555 (2007).

13           6.       In this matter, Plaintiff's Amended Complaint clearly puts Defendant on notice  
14 that its alleged conduct violated the FDCPA and the RFDCPA. Accordingly, allowing Plaintiff  
15 to amend her Complaint at this point does not change the nature of the lawsuit; rather, it allows  
16 Plaintiff to provide a more accurate factual basis as to which provisions of the FDCPA and the  
17 RFDCPA Defendant violated.

18           7.       Plaintiff has attempted to confer with Defendant whether it opposes the filing of  
19 this Motion and proposed Amended Complaint, to wit: on May 21, 2012, Plaintiff sent an email  
20 correspondence to Defendant regarding the foregoing, but to date has received no response.

21           WHEREFORE, Plaintiff now respectfully seeks leave of this Court to file the Amended  
22 Complaint attached as Exhibit "A" hereto, and incorporate the proposed attachment into the  
23 record of this case if such leave is granted.

24 Dated: May 31, 2012

RESPECTFULLY SUBMITTED,  
By: Ryan S. Lee  
Ryan S. Lee  
Attorney for Plaintiff.

**PROOF OF SERVICE**

I, Matthew Slodowy, state the following:

I am employed in Chicago, Illinois; I am over the age of 18 and am not a party to this action; my business address is 10 N. Dearborn St. Fl. 3, Chicago, IL 60602. On May 31, 2012, I served the following documents:

On the parties listed below:

Nelson & Kennard  
2180 Harvard St., Suite 160  
Sacramento CA 95815-3314

By the following means of service:

☒ **BY ELECTRONIC SERVICE:** the documents above were delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service. Plaintiff also served upon counsel via email.

☐ **BY FACSIMILE:** I transmitted the documents listed above by facsimile machine to the facsimile number listed above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission.

☐ **BY MAIL** (1013 a, 2015.5 CCP): I deposited such envelope in the mail at Chicago, Illinois. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Chicago, Illinois in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **STATE:** I declare under penalty of perjury under the laws of Illinois that the above is true and correct.

Executed on May 31, 2012, at Chicago, Illinois .

  
By: \_\_\_\_\_  
Matthew Slodowy